Ismail Khan J.: The appellant was charged before the learned Magistrate at Port Dickson with an offence contrary to section 4(1)(c) of the Common Gaming Houses Ordinance No. 26 of 1953. He was convicted and sentenced to pay a fine of $250. His appeal is against both conviction and sentence.

The appellant was arrested whilst cycling from Seremban towards Port Dickson and was found with three slips of paper P3, P4 and P5 with Chinese characters on them. According to P.W.5, who described himself as an expert in Chee Fah lottery, a person found in possession of these slips was a collector and that P3, P4 and P5 were records of Chee Fah lottery stakes.

It was urged in this appeal, firstly, that no evidence was adduced as to the *modus operandi* of the lottery and, secondly, that the expert evidence was only a bare expression of opinion not supported by any reasons. I can dispose of the first ground by saying that as Chee Fah is a character lottery, on the authority of the case of *Choo See Kean & Ors.* v. *Public Prosecutor* [1], no evidence of *modus operandi* by an expert is necessary. With regard to the second ground of appeal, each of P3, P4 and P5 contains parallel columns of figures and without any explanation it is difficult to see what were the figures chosen and what were the stakes. There is no explanation as to how the total of the amounts staked in respect of each slip was calculated. Apart from stating that P3, P4 and P5 are records of stakes, the rest of P.W.5's evidence is as follows:—

On P3 nine numbers	—	total stakes $ 2.60
On P4 twelve numbers	—	total stakes $ 7.50
On P5 thirteen numbers	—	total stakes $10.20.

I cannot, therefore, share the satisfaction of the learned Magistrate that the evidence of P.W.5 constituted an adequate explanation of his opinion that P3, P4 and P5 are records of stakes.

I also do not see that Mr. Dobree's Gambling Games in Malaya is of much assistance in establishing that P3, P4 and P5 are gambling stakes.

The fact that the expert is not obliged to give any evidence as to the *modus operandi* of the lottery in this case does not relieve him, however, of the necessity of giving detailed evidence of his reasons for holding that P3, P4 and P5 are Chee Fah stakes. On the subject of the duty of an expert, the law which has been applied in a number of subsequent decisions is clearly stated in the case of *Sim Ah Song & Anor.* v. *Rex* [2], where Brown Ag. C.J. said at p. 151:—

> "The business of an expert witness is to draw upon the store of his knowledge and experience in order to explain some matter which his experience should qualify him to understand. He is quite entitled to express his opinion, which indeed is the natural corollary of his explanation. But a bare expression of his opinion has no evidential value at all. Unless he gives an explanation which supplies the understanding of the subject which the Court lacks, the Court is in no better position than it was before to determine the question which it is its duty to determine, and if the Court acts upon a bare expression of the expert's opinion the determination of the question becomes that of the expert and not of the Court."

In this case the learned Magistrate merely echoed the opinion of P.W.5 and did not appear to have appreciated that it was his duty to study the exhibits himself with the assistance of a sufficiently detailed explanation from the expert and also with his knowledge gained in previous cases, if any, before he could satisfy himself that the exhibits related to betting and staking in the Chee Fah lottery.

In this case the prosecution was obviously relying on the presumption of section 11 of the Common Gaming Houses Ordinance. As there is no evidence that the exhibits in this case were records of stakes the presumption does not arise.

The appeal is allowed, the conviction quashed, the fine, if paid, to be refunded and the exhibits to be returned to the appellant.

Appeal allowed.

Solicitors: *George & Khoo.*

MOHAMED SAID v. FATIMAH

[A.C.J. (Adams J.) July 16, 1962]

[J.B. — Civil Appeal No. 1 of 1962]

Land Laws — T.O.L. holder — Exclusive possession subject to licence — Period of validity of licence — Land Enactment (Johore) No. 1 and Land Rules, 1929, r.11(1).

Trespass to land occupied under T.O.L. — Action brought after licence has expired — Subsequent renewal of licence.

A Temporary Occupation Licence gives the holder thereof exclusive possession of the land the subject matter of the licence during the period for which the licence is expressed to be valid, i.e. from the date of issue to December 31 of the year of issue. If the licence is renewed, the period for which the renewed licence gives exclusive possession to the licensee must, since a monetary payment is a condition precedent to the grant of any licence or renewal thereof, commence at the date when the payment is made.

In this case the appellant, a Temporary Occupation Licence holder, brought an action for trespass on May 6, 1961, against the respondent. His licence had expired on December 31, 1960 and he did not subsequently make the required renewal payment until July 5, 1961.

Held: at the time he instituted the action the appellant had no right to the possession of the land, and could not therefore have instituted an action for trespass against the respondent.

Cases referred to:—

(1) *Hill* v. *Tupper* 159 E.R. Ex. 51.

(2) *Julaika Bivi* v. *Mydin* [1961] M.L.J. 310.

(3) *Thompson* v. *Ward* [1953] 2 Q.B. at p. 159.

(4) *Eshelby* v. *Federated European Bank Ltd.* [1932] 1 K.B. 254.

CIVIL APPEAL.

Abdullah bin Dato Abdul Rahman for the appellant.

L. M. Ong for the respondent.

Adams J.: This is an appeal against the decision of the learned President of the Sessions Court sitting at Johore Bahru who dismissed on the 16th November, 1961, an action brought by the appellant against the respondent for trespass to certain land known as Lot No. 218 Registration No. 493 situate at Lorong 2 Kampong Pasir, Pengkalan Renting at the 5th milestone Jalan Scudai in the mukim of Pulai in the State of Johore. I shall refer to this in future in this judgment as the land.

The appellant was granted a Temporary Occupation Licence in respect of the land on the 18th December, 1956, under the powers conferred upon the Collector of Land Revenue by rule 11(1) of the Land Rules, 1929 made under the powers conferred by the Land Enactment (Johore Laws No. 1). The sub-rule (1) of the Rule reads as follows:—

> "The Collector may issue to any person a temporary licence to occupy a specified portion of State land, substantially in the form of Schedule V hereto. Every such licence shall expire not later than the 31st of December of the year in respect of which it is issued."

The licence which was produced in Court as an exhibit, in accordance with the provisions of sub-rule (1) above referred to expired on the 31st day of December, 1956. On the 3rd March, 1957, the appellant again paid the annual payment required by the licence. He made no annual payment in the years 1958, 1959, but on the 10th September, 1960, he made annual payments reserved by the licence for the years 1958, 1959, and 1960. He said that he had been away working in Pontian, and that was why he had not paid previously. He paid the annual payment for 1961 on the 5th July, 1961. During this time the respondent remained on the land.

When the appellant went to enter into occupation of the land, presumably in December 1956, he found that it was in fact occupied by the respondent who had built a house upon it. She is still living there. Apparently the previous temporary occupation licence holder was someone described by the appellant as his "ex-mother-in-law". It was suggested to him that it was that person who permitted the defendant to live on the land which has apparently been planted up with coconuts. The appellant said he had no knowledge of this.

Mr. L. M. Ong who appeared in the lower Court as well as before me repeated the arguments that he put forward in the lower Court which can be summarised shortly as saying that the plaintiff is not entitled to succeed because, firstly, at the time of the issue of the summons he was not the licence holder of the land in question, and secondly, that even if he were the licence holder he would not be able to sustain an action in trespass as he is a bare licensee having no title or right to possession since there was no interest in property created by the licence. He cited *Hill* v. *Tupper* [1] in support of this proposition. He argued from this that the appellant's remedy was to go back to the Land Office and complain. The State could then, under section 151, eject the respondent. Inche Abdullah submitted that whatever else it may be the respondent is clearly in unlawful occupation of State land and being a trespasser has no rights at all. The appellant therefore was entitled to the exclusive use of the land by virtue of the licence issued to him by the State Government and therefore he could maintain an action for trespass.

The learned President held that although he may well have been entitled to bring an action for trespass against a person interfering with his exclusive occupation of the land, as he had never been able to obtain possession of the land, he is not entitled at law to bring an action for trespass. His second reason for dismissing the action was that at the time the appellant sued out his summons in the lower court, he was not in fact a licence holder as the licence had expired on the 31st December, 1960. He paid the fee on the 5th July.

My task has been made considerably easier by the report of a case almost on all fours with the present one which was not available to the learned President or counsel. I refer to the case of *Julaika Bivi* v. *Mydin* [2] in which Neal J. held that an action for ejectment in an action for trespass will lie at the instance of the holder of a Temporary Occupation Licence. With that decision I most respectfully agree. I do not propose to go into the details of that decision. I would merely add that a Temporary Occupation Licence is issued over State land. No one is permitted to occupy State land without leave and to do so constitutes an infringement of section 151 of the Land Code and renders such a person liable to prosecution and on conviction to punishment by the Criminal Courts. Such licence therefore must confer upon the licensee the exclusive right to occupy the land in respect to which the licence is issued to the exclusion of anyone else. During the period for which the licence is valid therefore the licensee has a right to immediate and exclusive possession to the land. It is well established law that an action for trespass is maintainable not only at the suit of him who is in possession of the land but also, using the word 'possession' in its strict sense, at the suit of a person entitled to immediate and exclusive possession (see *Thompson* v. *Ward per* Evershed M.R.) [3]. That being the case, and the respondent clearly being in unlawful possession of the land it would appear to me that the appellant so long as he was the holder of a current Temporary Occupation Licence had an undoubted right to commence an action for trespass against the respondent.

But all this turns on the question as to whether or not the appellant was in fact at the time he sued out his summons the holder of a valid temporary occupation licence. Sub-rule (1) of rule 11 of the Land Rules provides that every licence shall expire not later than the 31st day

of December in respect of the year for which it was issued. The licence form should be substantially in the form found in Schedule V to the Land Rules. In fact the form used and issued to the appellant is not exactly as set out in the schedule which clearly sets out that the holder

'is hereby authorised to occupy the land hereunder described until December 31st of the current year for the purpose of in consideration of the payment made by him in advance as set out below.'

It follows that a licence is only valid for the period commencing with the payment required by the form until the 31st December in each year. The actual form used states:

"This licence is not transferable and may at any time be cancelled by the Collector."

It goes on to say:

"This licence is not valid beyond 31.12.56 unless renewed. If renewed a separate official receipt showing the period of validity of the renewal must be obtained for each renewal."

Since therefore the payment required by the Collector is a condition precedent for the grant of the original licence it is also a condition precedent to the grant of any further licence in respect to the same land, and since the receipt is required to show the period of the validity, the renewal must date from the date of payment only. Therefore a temporary occupation licence holder to be safe must make payment in respect to any renewal that he seeks on or before the 1st January in each year. If he does not, then since his licence has expired he is in unlawful possession of State land until he does make payment. And if he does make late payment, the period of the licence is not backdated to the 1st January in any year but the renewed licence commences again on the date of payment.

When the appellant sued out his summons in the Sessions Court on the 6th May, 1961, the licence had expired on the 31st December, 1960. He did not subsequently make the required payment until the 5th July, 1961. The renewed licence took effect from that date. Therefore at the time he issued the summons the appellant was not the person entitled to possession of the land. His action was premature. The action speaks from the date of the writ or summons in this case, and nothing occurring since the issue of the writ can be used to found a cause of action that did not exist at the time the writ was issued. The Court cannot even permit an amendment of the pleadings except by the consent of the parties which would so amend the writ as completely to change the cause of action so as to bring in a cause of action which was non-existent at the time the writ was originally issued (see *Eshelby* v. *Federated European Bank Ltd.*) [4].

To recapitulate, therefore, in my view a Temporary Occupation Licence gives the holder thereof exclusive possession of the land the subject matter of the licence during the period for which the licence is expressed to be valid, that is to say from the date of issue to the 31st day of December of the year of issue. If the licence is renewed, the period for which the renewed licence gives exclusive possession to the licensee must, since a monetary payment is a condition precedent to the grant of any licence or renewal thereof, commence at the date when the payment is made. This is borne out by the receipt itself. The only date on it is the 5th July, 1962. That clearly indicates the date of the commencement of the renewal period.

The fact that the Land Office makes a licensee, whose licence has expired, pay the same amount as he would have to pay if he renewed the licence on the day that it did expire, that is to say on the 31st December, is in my opinion immaterial. It does not mean that the Collector by accepting the payment is doing any more than indicate that he does not propose in all probability to proceed against the person making the payment for unauthorised occupation of State land.

The learned President was right, therefore, in holding that at the time he instituted his action the appellant had no right to the possession of the land, and could not therefore have instituted an action for trespass against the respondent. The appeal must be dismissed and the appellant must pay the costs.

Appeal dismissed.

Solicitors: *Murugason & Co.; L. M. Ong.*

RATNAM v. CUMARASAMY & ANOR.

[C.A. (Hill Ag. C.J., Good J.A. and Suffian J.) July 18, 1962]

[K.L. — F.M. Civil Appeal No. 10 of 1962]

Practice and Procedure — R.S.C., O.58, r.22(6) — Appeal Record not filed in time — Application to Court of Appeal for leave to file Appeal Record dismissed — Whether order of Court of Appeal final or interlocutory.

Appeal to the Yang di-Pertuan Agong — Leave to — Appeal from the Supreme Court Ordinance, 1958, s.3(1).

An order refusing an extension of time to file the record of appeal is a final order for the purposes of appeal under section 3(1) of the Appeals from the Supreme Court Ordinance, 1958.

Text of Lord Alverstone in *Bozson* v. *Altrincham U.D.C.* [4] adopted.

Cases referred to:—

(1) *In re Page, Hill* v. *Fladgate* [1910] 1 Ch. 489.
(2) *Shubrook* v. *Tuffnell* (1882) 9 Q.B.D. 621.
(3) *Salaman* v. *Warner* (1891) 1 Q.B. 734.
(4) *Bozson* v. *Altrincham U.D.C.* [1903] 1 K.B. 547.
(5) *Isaacs* v. *Salbstein* [1916] 2 K.B. 139.
(6) *Cogstad* v. *Newsum* [1921] 2 A.C. 528.
(7) *Arnot* v. *Amber Chemical Co.* [1953] C.L.Y. 2719; *The Times*, May 20, 1953.
(8) *Shell Co. of the Federation of Malaya Ltd.* v. *Chairman, Municipal Council (No. 2)* [1961] M.L.J. 149.
(9) *Standard Discount Co.* v. *La Grange* (1877) 3 C.P.D. 67.
(10) *Collins* v. *The Vestry of Paddington* (1880) 5 Q.B.D. 368.